

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Ernesto GARCIA-Diaz,

Defendant.

) Mag. Case No.

'08 MJ 81 47

) COMPLAINT FOR VIOLATION OF:


) Title 8, U.S.C., Section 1326

) Deported Alien Found In the United States

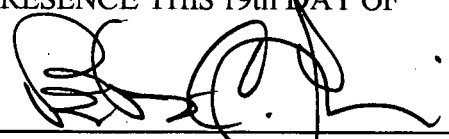
The undersigned complainant, being duly sworn, states:

On or about February 16, 2008, within the Southern District of California, defendant Ernesto GARCIA-Diaz, an alien, who previously had been excluded, deported, and removed from the United States to Mexico was found in the United States, without the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security (Title 6, United States code, section 202(3) and (4), and 557), having expressly consented to the defendant's reapplication for admission into the United States; in violation of Title 8, United States Code, Section 1326.

And the complainant states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.


Senior Patrol Agent

SWORN TO BEFORE AND SUBSCRIBED IN MY PRESENCE THIS 19th DAY OF
FEBRUARY 2008.


PETER C. LEWIS
United States Magistrate Judge

UNITED STATES OF AMERICA

I, Senior Border Patrol Agent Marco Miranda declare under penalty of Perjury, the following is true and correct:

PROBABLE CAUSE STATEMENT

The complainant states that this complaint is based upon the statements of the apprehending Border Patrol Agent, J. Schwer, that the Defendant was found and arrested on February 16, 2008 west of the Calexico, California Port of Entry.

BPA Schwer was performing his assigned Border Patrol duties approximately 29 miles west of the Calexico, California Port of Entry. BPA Schwer observed an individual, later identified as Ernesto GARCIA-Diaz, leading five other individuals through the Jacumba Wilderness Mountains. BPA Schwer identified himself as a Border Patrol Agent and questioned GARCIA and the other individuals as to their immigration status to be in the United States. GARCIA stated that he is a citizen of Mexico and illegally in the United States. GARCIA was placed under arrest.

Record checks revealed that GARCIA has been excluded from the United States on numerous occasions. GARCIA'S latest exclusion was on February 8, 2008. Record checks also revealed that GARCIA has previously been arrested for alien smuggling as well as transporting aliens.


At approximately 1245 AM hours, GARCIA was advised of his Miranda Rights in the Spanish language by Agent Morales. GARCIA acknowledged understanding his rights and was willing to answer questions. GARCIA stated that he did not have any legal documents that would allow him to work in or reside in the United States. GARCIA also stated that he last entered the United States by walking through the mountains. GARCIA was asked if he has been previously been deported from the United States and he stated "Yes". There is no evidence GARCIA has sought or received permission from the Attorney General or the Secretary of the Department of Homeland Security to re-enter the United States.

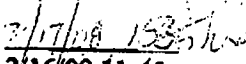
Three of smuggled aliens in the group, Hugo ROSAS-Avelardo, Tomas ROMAN-Lugo, and Jose ROSAS-Avelardo all identified GARCIA as the guide. Each subject stated that GARCIA led them through the mountains and was in front of the group the entire time.

Executed on February 17, 2008 at 11:45.


Senior Border Patrol Agent

On the basis of the facts presented in the probable cause statement consisting of 1 page, I find Probable cause to believe that the defendant named in this probable cause statement committed the offense on February 16, 2008 in violation of Title 8, United States Code 1324.


William McCune, Jr.
United States Magistrate Judge


2/17/08 11:45
2/16/08 11:45